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IN THE SUPREME COURT OF ALABAMA

EX PARTE, MENZA B. GRACE.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ALABAMA.

STATEMENT OF JURISDICTION.

Jurisdiction is invoked under Section 237 (a) of the Judicial Code (28 U. S. C. A. 344 (a); the Act of January 31, 1928, 28 U. S. C. A. 861 (a), 861 (b), 45 Stat. 54, in that there is drawn into question the validity of the statutes of the State of Alabama on the ground said statute and rules are repugnant to the Constitution of the United States.

Statutes of the State and Rules Governing the Conduct of Attorneys Which Are Involved.

The statute of Alabama and rules of amended rules governing the conduct of attorneys in Alabama, the validity of which is involved (Act of 1923, p. 100, now Title 26, Sections 21 to 62 inclusive), and Rule No. 36 of Rules governing the conduct of attorneys in the State of Alabama.

Section 21. Board of Commissioners Established.—There shall be a board of commissioners of the State bar, consisting of as many members as there are judicial circuits, to hold office for three years and to be elected in the manner hereinafter provided.

Section 22. Selection of Commissioners.—The Board of Commissioners shall be selected by the members of the

State Bar, who shall vote by ballot. Each judicial circuit of the State of Alabama shall be entitled to a commissioner on said Board of Commissioners, and no judicial circuit shall have more than one commissioner, provided, however, that nothing contained in this article shall prohibit the election of a president of the State Bar as hereinafter in this article provided for at an annual meeting of the State Bar, who shall be a bona fide resident of any judicial circuit of this State, and who shall be ex officio president of the Board of Commissioners in case he is not already a member of said board. If hereafter additional circuits are constituted, such additional circuits shall be entitled to a commissioner of said board. The ballots shall be deposited in person or by mail with the secretary of the board or such other officer as it may designate. There shall be an annual election for the purpose of selecting successors to the commissioners whose term expire. The board shall prescribe rules and regulations in regard to such annual elections not in conflict with the provisions of this article. The board shall in accordance with its rules, give at least sixty days' notice of the time for holding the election each year. The commissioners for the respective judicial circuits shall be elected by the members of the bar of the respective judicial circuits, voting by ballot in the annual election hereinabove provided for. Such annual election shall be held on the first Tuesday in June of each year and continue for one week. The term of each commissioner shall be three years from July first following his election. (Ib. 1927, p. 79; 1931, p. 284).

SECTIONS 23 AND 24 NOT APPLICABLE.

Section 25. Authority Conferred.—The Board of Commissioners shall have power: (a) To determine, by rules, the qualifications and requirements for admission to practice law; (b) to conduct, through board examiners, herein-

after provided for, the examination of applicants; and each board of examiners shall certify to the Supreme Court the names of the applicants found to be qualified; such certification shall entitle such persons to be enrolled in the bar of the State and to practice law, provided the fees hereafter required are paid; (c) subject to the approval of the Supreme Court, to formulate rules governing the conduct of all persons admitted to practice, and to investigate, or cause to be investigated, and to pass upon, all complaints that may be made concerning the professional conduct of any person who has been, or may hereafter be, admitted to the practice of the law; (d) subject to approval of the Supreme Court governing the reinstatement of members of the bar who have been disbarred, and to pass upon all petitions for reinstatement; (e) to appoint one or more committees from the membership of the board, or from the membership of the entire bar, or partly from one and partly from the other, to take evidence in connection with any complaint filed against any attorney and forward the same to the board. In all cases, testimony with reference to such charges shall be taken at the courthouse of the county of the residence of the party charged, provided the evidence of witnesses residing outside of such county may be taken in the same manner as provided by law for taking of depositions in civil cases. The state solicitor of the circuit in which such accused attorney resides shall prosecute any such charge or case, interrogate the witnesses, introduce the evidence in support of such charges, and, when requested by any member of the board, argue the cause before the board. The board shall administer such discipline, by public or private reprimand, suspension from the practice of law, or exclusion and disbarment therefrom, as the case shall, in their judgment, warrant. A majority of the board shall constitute a quorum and the majority of those present (if a quorum be present) shall be empowered to act as and for

the entire board. The Supreme Court may, and on petition of the party aggrieved must, in any case of suspension or disbarment from practice, review the action of the board, and may, on its own motion, and without the certification of any record, inquire into the merits of the case and take any action agreeable to their judgment. Rules regulating the manner of such review and providing for the certification of the evidence, or if the Supreme Court desire, the taking of additional evidence, shall be promulgated by said board and become effective upon approval by the Supreme Court. (f) To make rules and by-laws not in conflict with any of the terms of this chapter concerning the selection and tenure of its officers and committees and their powers and duties, and generally for the control and regulation of the business of the board and the State Bar. (g) To hold and conduct educational and social meetings and activities among the members of the bar, to publish journals and generally to do such things as in their judgment may tend to improve the educational and ethical standing of the bench and bar. (h) Should any vacancy occur on said board, to fill such vacancies by appointment of a member of the State Bar from the judicial circuit in which said vacancy exists and such appointee shall hold for the time of the unexpired term or pending the election of his successor. (i) To establish circuit or branch association of the State Bar and if circuit associations are established, the member of the board from said circuit shall be ex-officio the president of such circuit association. Said circuit or branch association shall have no authority to suspend or disbar attorneys and in all matters shall be subordinate to the authority of the board. If any member of said board is a party to the preferment of charges for disbarment or suspension of any attorney, or there exists as against any member of such board any cause provided by law for the disqualification of judges or jurors in civil or criminal cases, such member shall be disqualified

from sitting as a member of said board in the hearing of such charges. Said board shall have no authority, or shall it in any way undertake, to regulate the fees or charges of lawyers for the rendition of their professional services. (1923, p. 100; 1931, p. 284).

SECTIONS 26, 27 NOT APPLICABLE.

Section 28. Existing Causes of Removal or Suspension and Laws Relating thereto Cumulative.—The causes of removal or suspension of attorneys, and methods of proceeding in reference to such removal or suspension are hereby declared to be cumulative with the right and power herein given to the Board of Commissioners to reprimand, suspend, exclude, or disbar attorneys. (1923, page 100).

SECTIONS 29, 30, 31 AND 32 NOT APPLICABLE

Section 33. Discipline: Prosecution or Procedure.—The Board of Commissioners shall establish rules governing procedure in cases involving alleged professional misconduct of members of the State Bar. The grievance committee of the Alabama State Bar, or the grievance committee of a circuit, county or city association, established or approved by the Alabama State Bar, or its board of commissioners, shall have the power and authority to investigate any alleged professional misconduct of a member of the State Bar, whether or not charge or complaint therefore be made or referred to it, and to report its findings or recommendations to the Board of Commissioners, or to prefer complaint or charge thereon against the accused attorney at law before the Board of Commissioners for trial thereof, and to prosecute to decision the said complaint or charge before the Board of Commissioners, and the duty is imposed upon said Board of Commissioners of considering such findings or recommendation, and of hearing and determining such

complaint or charge. Such grievance committee is hereby empowered to take testimony under oath in any such investigation, or the Board of Commissioners or such grievance committee may designate any person as commissioner to take testimony under oath in any such investigation whose compensation for the services so rendered may be fixed and ordered paid by the Board of Commissioners at its discretion. Such Board of Commissioners or any member thereof or such grievance committee or any member thereof shall not be required to give any security for costs and shall not be liable for any costs or damages to the accused attorney incident to such investigation, report, complaint, charge, prosecution or trial. The Board of Commissioners may appoint counsel to prosecute before it any such complaint or charge so preferred before it against any attorney, and may within its discretion fix and order paid reasonable compensation for the services of the State or of such counsel. And it shall be the duty of the sheriff of the State or of any lawful officer thereof to serve such writs, subpoenas, or other papers in connection with the investigation, hearing and determining of such complaint or charge as may be placed in his hands by said Board of Commissioners or said grievance committee or any person designated hereunder as commissioner to take testimony in such investigation or any counsel appointed by the Board of Commissioners to prosecute before it such complaint or charge or the accused attorney or his or her attorney; such subpoenas, writs or other papers hereunder may be served by sending copies thereof to the proper parties by registered mail and the return receipt of such writs, subpoenas or other papers, signed by the party to be served, shall be construed to be as personal, sufficient and legal service of all such writs, subpoenas or other papers (Ib. 1931, page 683).

Section 35. Power of Subpoena.—In the investigation of charges or professional misconduct, the board, or any com-

mittee appointed by it for this purpose shall have power to summon and examine witnesses under oath and compel their attendance and the production of books, papers, documents and other writings necessary or material to the inquiry. Such summons or subpoena shall be issued under the hand of the secretary of the board or the chairman of any duly constituted subcommittee of the board, and shall have the force of a subpoena issued by a court of competent jurisdiction, and any witness or other person who shall refuse or neglect to appear in obedience thereto, or who shall refuse to be sworn or testify or produce books, papers, documents or other writings demanded shall be liable to attachment upon application to the Supreme Court of the State or any judge of any court of record for the district where the investigation is conducted as in cases of contempt (1923, page 100).

Section 36. Rights of Accused Member.—Any member of the bar complained of shall have notice and opportunity to defend by the introduction of evidence and the examination of witnesses called against him, and the right to be represented by counsel. He shall also have the right to require the secretary to summon witnesses to appear and testify or produce books, papers, documents or other writings necessary or material to his defense in like manner as above provided (Ib.).

Section 37 Not Applicable.

Section 38. Record of Proceedings.—A complete record of the proceedings and evidence taken by the board, committee, or commissioner shall be made and preserved by the board, but it may, where sufficient reason appears and the accused gives his consent, cause same to be expunged (Ib.).

Section 39. Attorney Must Take Oath.—Every attorney at law being permitted to practice shall take the following

oath or affirmation before an officer authorized to administer oaths:

> "I do solemnly swear (or affirm) that I will demean myself as an attorney, according to the best of my learning and ability, and with all good fidelity, as well to the court as to the client; that I will use no falsehood or delay any person's cause for lucre or malice, and that I will support the Constitution of the State of Alabama and of the United States, so long as I continue a citizen thereof, so help me God."

Section 40. Penalty for Practicing Without Taking Oath.—If any attorney commences practicing before taking oath as prescribed by the preceding section, he forfeits the sum of two hundred dollars, one-half to the use of the person suing for the same, and the other half to the State.

Section 41. Any Person May Manage His Own Case.—The provisions of this article shall not be construed to prevent any person from conducting or managing his own cause in any court of this State.

Section 42 Omitted.

Section 43. Duties of Attorney.—It is the duty of attorneys:

1. To support the constitution and laws of this State, and of the United States.

2. To maintain the respect due courts of justice and judicial officers.

3. To employ for the purpose of maintaining the causes confided to them such means as are consistent with truth, and never seek to mislead the judge by any artifice, or false statement of the law.

4. To maintain inviolate the confidence and at every peril to themselves to preserve the secrets of their clients.

5. To abstain from all offensive personalities, and to advance no fact prejudicial to the honor or reputation of a party, or a witness, unless required by the justice of the cause with which they are charged.

6. To encourage neither the commencement nor continuance of any action or proceeding from any motive or passion or interest.

7. Never to reject for any consideration personal to themselves the cause of the defenseless or oppressed.

Section 44. Unlawful to Encourage or Solicit Litigation.—No attorney at law, either before or after action brought, shall promise or give or offer to promise or give a valuable consideration to any person as an inducement to placing, or in consideration to any person as an inducement to placing, or in consideration of having placed in his hands or in the hands of any partnership of which he is a member, a demand of any kind, for the purpose of bringing suit or making claim against another, or to employ a person to search for or procure clients to be brought to such attorney.

Sections 45, 46, 47, 48 Not Applicable

Section 49. Causes of Removal of Attorney.—An attorney must be removed for the following causes by the circuit court:

1. Upon him being convicted of a felony other than manslaughter, or of a misdemeaner involving moral turpitude; in either of which cases the record of his conviction is conclusive evidence.

2. When any judgment is rendered against him, for money collected by him as attorney, upon which judgment and execution has issued, and been returned no property; in which case the record of the judgment and execution is conclusive evidence.

Section 50. Other Causes of Removal or Suspension.—For the following causes he may be removed or suspended by the circuit court:

Upon it being shown, to the satisfaction of the court, that he has been guilty of any deceit of wilful misconduct in his profession.

For a wilful disobedience or violation of the order of a court, requiring him to do or forbear an act connected with, or in the course of his profession.

For a wilful violation of any of the provisions of section 43 or section 44 of this title.

Sections 52, 53, 54, 55, 56, 57, 58, 59, 60, 61 and 62 not applicable.

SECTION A—RULES GOVERNING THE CONDUCT OF ATTORNEYS IN ALABAMA.

It shall be the duty of all persons heretofore or hereafter admitted to practice law in the State of Alabama:

1. To observe and comply with each and every clause and portion of the oath of office of an attorney, as it is prescribed by Section 6243 of the Code of Alabama of 1923, and as it may from time to time be amended.

2. To maintain the respect due to the judicial officers and the Courts of Justice, State or Federal, within the State of Alabama.

34. Do any act which, by the law of Alabama, constitutes a felony (other than manslaughter) or a misdemeanor involving moral turpitude.

36. No person licensed to practice law in the courts of the State of Alabama shall be guilty of any conduct unbecoming an attorney at law.

Date of the Judgment or Decree.

The Supreme Court of the State of Alabama in an opinion filed February 25, 1943, modified and affirmed the judg-

ment or resolution of the Board of Commissioners of the State Bar of Alabama against the appellant, suspending him from practicing law in the State of Alabama for a term of two years. A copy of the opinion is hereto annexed and made exhibit "A" hereto. Appellant filed a petition for a rehearing in the cause within the time allowed by law and on May 13, 1943, the said petition for a rehearing was overruled by the Supreme Court of the State of Alabama without an opinion being filed.

A petition for allowance of appeal to the Supreme Court of the United States was presented to the Chief Justice of the Supreme Court of the State of Alabama in the cause on July 24, 1943, and an order allowing appeal was duly signed on July 24, 1943.

Nature of the Case and Ruling of the Court Bringing the Case Within the Jurisdictional Provisions Relied Upon.

Appellant is an attorney, practicing law at Birmingham, in the State of Alabama. Appellant was a candidate in the 1942 democratic primary in the State of Alabama for the nomination as Associate Justice of the Supreme Court of Alabama. Honorable Virgil Bouldin, an Associate Justice of that Court, was also a candidate in the same primary for the same nomination. Before appellant qualified as a candidate to run in the primary for the nomination, he wrote a letter to Honorable Virgil Bouldin regarding his candidacy and the contemplated candidacy of appellant for the nomination. A copy of the letter is as follows:

Birmingham, Ala., February 4, 1942.

Judge Virgil Bouldin,
Montgomery, Alabama.

DEAR JUDGE BOULDIN:

I have been going about the state for the last few months feeling out the situation with reference to being a candidate

in the coming state primary for the place occupied by Judge Thomas E. Knight on the Alabama Supreme Court. Three other gentlemen are also campaigning for that place, and Judge Field of Anniston has actually qualified with the Secretary of State. A great majority of the members of the bar, as well as others, tell me I should be campaigning for the place you occupy on the Court.

The argument is advanced, the lawyers of the State, after a hard fight, managed to get the Act through the 1939 Legislature under the terms of which the members of the Supreme Court who have reached seventy years of age and have served more than fifteen years may retire and receive a salary of $4,000.00 a year and you are eligible for retirement. They say you are already seventy-five years of age and will be in your seventy-seventh year when the new term begins in January, 1943; that you have become rather feeble in body, etc. They bring up the case of Judge John C. Anderson. All of us know he should not have been on the bench the last three or four years of his life.

Since so many members of the Bar, county officials, and others have offered me their support if I will qualify and run for the place you occupy, I have made up my mind to join you in a campaign of the State of that place. You have already qualified with the Secretary of State. You so very kindly wrote me several months ago as to your intentions, and since I have made up my mind to the above effect, I think I should write you personally and before I qualify. I have had some difficulty in making up my mind.

I understand the rumor is current over the State I will be a candidate for the place you occupy on the Court. I don't know how it became current. In talking to Mr. J. Miller Bonner here a week or so ago, I may have said something that led him to think I was going to run, and the rumor may have become current from that source. I have not told

any one I would or would not run, and finally made up my mind just a few days ago.

In going into the campaign, I expect to make an active campaign of the State. I ran for Attorney General in 1926 and again in 1930 and I am fairly well acquainted in the State. I was in the Army in 1917-18 and feel I can depend upon my comrades for support. If I can have their support, I will have a nucleus of an organization in every county in the State. At that I would not have the organization Judge Ed. Livingston had when he ran two years ago, but if the members of the Bar who have proffered me their support will exercise themselves, I ought to do pretty well. At least, it looks promising to me. It seems every member of the Bar esteem you very highly, and all of us agree you have made a great judge on the Supreme Court of Alabama, but at the same time they feel you should take a well deserved rest and give a younger man a chance. You have been on the bench for more than fifteen years, have never had opposition, or had to campaign the State. In making this campaign, I feel it is not like campaigning against a man of advanced years and probably knocking him out, cutting off his income, because you are eligible for retirement and to draw a salary of $4,000.00 a year.

If you should make up your mind not to undertake the campaign, not finally qualify with the Chairman of the State Committee, I will agree to augment your salary of $4,000.00 with another $1,000.00 a year for the years 1943 and 1944. This would give you a salary or income of $5,000.00 a year and I would have a salary or income of $5,000.00, and I would be spared the loss of time and much hard work in making the campaign. I know of nothing wrong in such an arrangement, and if there was, no one would be further from it than I would. No one need be any the wiser, and I will be willing to sign a proper agreement with you. I figure it will cost me $1,500.00 or $2,000.00 to make the campaign.

I have always been very fond of you, and I think you and I can sit down and discuss the matter and I am going to delay qualifying with the Secretary of State for a reasonable time that you may consider it, and to hear from you. I will be glad to come to Montgomery any day and talk to you, but in the meantime I expect to continue with the prosecution of the campaign, since I have definitely made up my mind to enter it, win or lose. If we go into the campaign together, I expect us to come out of it just as good friends as when we entered it. If you defeat me, well and good, and if I defeat you, you still have the right to retire and take the $4,000.00 salary, but of course, my proposition would be off. I always try to drop in and shake hands with you when I am in Montgomery and enjoy talking to you. With my very best wishes, I am,

Sincerely yours, M. B. Grace.

MBG: mp.

Appellant admitted writing and mailing the lettter. Honorable Virgil Bouldin was nominated. On the last day for qualifying two other gentlemen, both of the Birmingham Bar, entered the campaign seeking the same nomination. Shortly after Honorable Virgil Bouldin was nominated, charges were filed against appellant before the Board of Commissioners of the State Bar of Alabama, based on the letter he wrote Honorable Virgil Bouldin. Appellant submitted the charges to a number of the more prominent members of the Birmingham Bar Association who advised him, in their opinion the charges were frivolous, being of a political nature rather than professional, and not involving moral turpitude and the Board of Commissioners or the court, did not have jurisdiction in such matters. At first appellant represented himself in the matter and filed a motion to dismiss the matter and also an answer denying the charges. The proposition was raised by the motion to dis-

miss that the matter grew out of a political campaign, was non-professional, and the Board of Commissioners did not have jurisdiction. Shortly before the matter was set for hearing before the Board of Commissioners, appellant employed counsel to represent him in the matter.

On the day the cause was to be heard before the Board of Commissioners, appellant through his attorney, filed a demurrer to the complaint, and each charge contained therein, separately and severally, raising the constitutionality and validity of the Act of the Legislature of Alabama creating the Board of Commissioners (Acts 1923, p. 100), now Title 46 of the 1940 Code of Alabama, and Rule No. 36 of Section A of the rules governing the conduct of attorneys in Alabama, which rule has the force and effect of a statute in the State of Alabama, on the ground, among others, the Act and the rule is repugnant to the first amendment to the Constitution of the United States and is also repugnant to Section 1 of the 14th Amendment to the Constitution of the United States, and the demurrer also adopted all grounds assigned in the motion to dismiss the charges.

On trial of charges against an attorney in Alabama, the Board of Commissioners do not rule on the pleadings separately but the pleadings and the testimony are considered together by the Board of Commissioners in executive session and the ruling of the Board of Commissioners is in the form of a resolution, either finding the accused attorney guilty or not guilty, and if found guilty, the penalty is fixed by a resolution adopted by the Board of Commissioners in executive session. Appellant was found guilty, a general verdict, in the form of a resolution, was adopted by the Board of Commissioners, and he was suspended from practicing law in Alabama for a period of five years. Appellant filed a petition in the Supreme Court of Alabama for a review in the cause, which Court modified the resolution, reducing the period of suspension from five to two years, and

as modified, affirmed the judgment or resolution of the Board of Commissioners.

Grounds Upon Which It Is Contended the Questions Involved Are Substantial.

The proceedings involve serious and substantial questions which have never before been presented to the Supreme Court of the United States, or to any court of last resort of any State, so far as we know or are advised. The question of the validity of a State statute and rule is drawn into question on the ground it is repugnant to the Constitution of the United States; that the constitutional rights of the appellant have been invaded and violated, and his property taken without due process of law. Appellant was charged solely with a violation of rules 1, 2, 34 and 36 of Section A of rules governing the conduct of attorneys in Alabama in writing and mailing the letter to Honorable Virgil Bouldin. The Supreme Court of Alabama based its opinion squarely under rule 36 of rules governing the conduct of attorneys in Alabama; that the writing and mailing the letter in question constituted conduct unbecoming an attorney; and the Supreme Court of Alabama refused to rule squarely on the questions raised by the demurrer, but in effect, in modifying the resolution of the Board of Commissioners and affirming it as modified, upheld the validity of the Act and the rules. In the case of *Thornhill* v. *Alabama,* 310 U. S. 88, 84 L. Ed. 1093 and *Carlton* v. *People of the State of California,* 310 U. S. 106, 84 L. Ed. 1005, the Supreme Court of the United States held a similar statute to be unconstitutional and void, and as being repugnant to the Constitution of the United States. In the case of *Broad River Power Co.* v. *South Carolina,* 281 U. S. 537, 74 L. Ed. 1023, the Supreme Court of the United States held that even though the constitutional protection invoked be denied on non-Federal grounds, it was the province of the Supreme Court of the

United States to inquire whether the decision of the State Court rests upon a fair and substantial basis. The Alabama Supreme Court held the letter constituted conduct unbecoming an attorney and grounded the opinion under rule 36 of rules governing the conduct of attorneys. There is not a scintilla of evidence in the record to show appellant was guilty of any professional misconduct. Mr. Justice Brown, an Associate Justice of the Alabama Supreme Court, on a subsequent proceeding, probably expressed the sentiment or opinion of the Alabama Supreme Court when he said: The letter Mr. Grace wrote to Judge Bouldin, in effect, said to him—you get out of the way and let me run and I will agree to divide the salary of the office with you. The Supreme Court of Alabama, in its opinion filed in the cause (p. 1 and 2), in effect held: An attorney may be disbarred or suspended from the practice of law, not only for professional misconduct, but for nonprofessional misconduct. In a recent case, the *United States* v. *Louis H. Pink*, Supt. of Insurance of the State of New York, the Supreme Court of the United States said and ruled, the Court will review or independently determine all questions on which a Federal right necessarily depends. The importance and novelty of the question has never been before the Supreme Court of the United States. See, also, in this connection the case of *Perre* v. *Louisiana*, 306 U. S. 354, 85 L. Ed. 757. The Alabama Supreme Court should have held that rule 36 is unconstitutional and void because it abridges the freedom of speech, and is repugnant to the 1st and 14th Amendments to the Constitution of the United States in accordance with the holding of the Supreme Court of the United States in *Schenck* v. *United States*, 249 U. S. 47, *Bridges* v. *California*, 314 U. S. 252; *Stromberg* v. *California*, 283 U. S. 359, *DeJonge* v. *Oregon*, 299 U. S. 353; *Whitney* v. *California*, 274 U. S. 357, *Fiske* v. *Kansas*, 274 U. S. 380; *Near* v. *Minnesota*, 283 U. S. 697; *Thornhill* v. *Alabama*, *supra*. Should an at-

torney criticize the Supreme Court of Alabama, any Judge thereof, any Judge of the Circuit Court, or any decision rendered by any court in Alabama, at any time or place, and although in a nonprofessional act or manner, under rule 36, he may be proceeded against and disbarred or suspended. If he is an attorney, and should have an automobile accident, he may be disbarred or suspended from practicing law. If an attorney is the editor of a newspaper, and also engaged in the practice of law, if an editorial appears in it criticising the action of the court * * * or some * * * opinion rendered by a court, even a legitimate criticism, charges may be preferred against him and under rule 36, and the opinion of the court in Ex parte Menza B. Grace, 13 So. (2d) 178, disbarred or suspended from practicing law.

State of the Proceeding and Manner in Which the Federal Question Was Raised.

The Federal question was first raised by demurrer filed by appellant to the complaint before the Board of Commissioners on September 12, 1942. It was again raised by briefs and oral argument on submission of the cause in the Supreme Court of Alabama. It was again raised by petition for rehearing filed in the cause, which was overruled and denied on May 13, 1943.

In accordance with Section 1 of Rule 12, Rules of the Supreme Court of the United States, a copy of the opinion of the Supreme Court of Alabama is attached hereto, marked Exhibit "A".

(Signed) MENZA B. GRACE,
Appellant.

(Signed) D. G. EWING,
Attorney for Appellant.

EXHIBIT "A".

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT.

THE SUPREME COURT OF ALABAMA.

OCTOBER TERM, 1942-43.

6 Div. 86.

EX PARTE: MENZA B. GRACE.

PETITION FOR REVIEW.

GARDNER, *Chief Justice:*

Petitioner, a member of the Bar of the State, was suspended from the practice of law for a period of five years by the Board of Commissioners of the State Bar, and presents this petition for a review of such order.

The law governing the power and authority of said Board and of this Court in matters of this character is well settled, and the citation of some of our decisions will suffice for this purpose. *Ex parte Thompson*, 228 Ala. 113, 152 So. 229; *In re: Fite*, 228 Ala. 4, 152 So. 246; *Ex parte Denson*, 235 Ala. 313, 178 So. 434; *Ex parte Messer*, 228 Ala. 16, 152 So. 244; *In re: Stephenson*, 10 So. (2d) 1; *McCord* v. *State*, 220 Ala. 466; Amended Rules, 239 Ala. XXIII, *et seq.* These authorities indicate not only the inherent power of the Court in matters of this character (*Ex parte Thompson, supra; Ex parte Denson, supra*), but also that formal and technical pleadings are not essential.—*McCord* v. *State, supra.*

We may add that the charge of violation of Rule 36, Section A, of the Rules duly adopted for the conduct of attorneys (239 Ala. XXV), gave to petitioner full notice of the facts upon which reliance was had as a basis for such a charge, and consideration of this charge serves all purposes here without regard to others. All relate to one basic charge of misconduct and to one state of facts, and our consideration here is based upon a violation of said Rule 36. And by the decided weight of authority, it is also well settled that the conduct justifying disbarment or disciplinary measures need not be connected with any professional employment.—

5 Am. Jur. 426; 6 Corpus Juris 584; 7 Corpus Juris Secundum 762; *People* v. *Smith,* 290 Ill. 241, 124 N. E. 807, 9 A. L. R. 183, and notes, page 189; *Re Macy,* 109 Kan. 1, 196 Pac. 1095, 14 A. L. R. 848.

But in this case the conduct complained of did grow out of the fact petitioner was a member of the Bar, as only an attorney was eligible for the judicial office to which he aspired.

It would serve no good purpose to enter into a discussion of the facts. Since the passage of the Act of 1915 (Title 13, Section 66, Code of 1940), it has not been the policy of the Court to enter into any discussion of evidence in detail.—*Harris* v. *Bowles,* 208 Ala. 545, 94 So. 757; *Caples* v. *Young,* 206 Ala. 282, 89 So. 460.

The misconduct here involved grows out of a letter, admittedly written by petitioner, to one holding high judicial office, which letter contains a proposal highly improper, giving to it a most reasonable and charitable interpretation, which proposal, including as it did a monetary consideration (a sharing of official salary—*Robertson* v. *Robinson,* 65 Ala. 610), was intended to redound to petitioner's benefit (securing the nomination to the office without opposition) as a prospective and privately declared candidate for the nomination to the office then held by the addressee of this letter, who had declared his candidacy for renomination.

To discuss the matter in further detail would but serve to bring into bold relief a most unfortunate incident. Suffice it to say, we conclude the undisputed evidence discloses highly reprehensible conduct justifying the action of the Board of Commissioners of the State Bar in entering a judgment of suspension.

We have considered the argument that petitioner made no effort to conceal the matter from the public, and that he in fact made use of his offer as part of his campaign literature. The insistence is that he had no unlawful motive, and was in fact unmindful of improper conduct in making such an offer. We have also considered the fact, however, that petitioner, in the original letter, indicated no one else need be apprised of the matter. "No one need be any the wiser" is a quotation from the letter, which at the same time protests the writer sees no wrong in making the offer.

These are all matters proper to be weighed by way of mitigation of the wrongful conduct.

As we view it, there can be no justification for this letter containing such an offer. It cannot be too strongly condemned. And the Board of Commissioners of the State Bar were fully warranted in the order of suspension by the uncontradicted proof. But, as we observed in *Ex parte Thompson, supra,* "To temper justice with mercy is but to respond to the best impulses in all the affairs of life," and fully mindful of our duty and responsibility both to petitioner and the public, after due deliberation, we are persuaded a suspension period of two years would serve all purposes, and that the order of the Board be so modified.

The judgment of suspension will be here modified so as to fix the period at two years, and as so modified will be affirmed. It is so ordered.

Modified and affirmed.

All the Justices concur, except Bouldin, J., not sitting.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 278

MENZA B. GRACE,

Appellant,

vs.

THE BOARD OF COMMISSIONERS OF THE STATE BAR OF ALABAMA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ALABAMA.

STATEMENT OPPOSING JURISDICTION.

RICHARD T. RIVES,
JAMES W. AIRD,
Counsel for Appellee.

IN THE SUPREME COURT OF ALABAMA

Ex Parte, Menza B. Grace.

STATEMENT OF APPELLEE AGAINST JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES.

Comes the Appellee, The Board of Commissioners of the State Bar of Alabama, and files the following statement and grounds against the jurisdiction of the Supreme Court of the United States in this cause in accordance with Paragraph 3 of Rule 12 of the rules of the Supreme Court of the United States:

1. For that no jurisdiction is conferred on the Supreme Court of the United States under the facts set forth in Appellant's statement of the record.

2. For that it affirmatively appears from the statement of the record in this cause that no jurisdiction is conferred upon the Supreme Court of the United States on the facts alleged in said statement.

3. For that the statement of the Appellant fails to set forth any fact to sustain the jurisdiction of the Supreme Court of the United States.

4. For that the jurisdictional statement of the Appellant fails to disclose any Federal question which was presented and passed on by the Supreme Court of the State of Alabama.

5. For that the jurisdictional statement of the Appellant fails to set forth the stage in the proceedings in the Court

of first instance and in the Appellate Court at which, and the manner in which, the Federal questions sought to be reviewed were raised in accordance with Rule 12 of the Supreme Court of the United States.

6. For that the jurisdictional statement of Appellant fails to state the method by which the Federal questions sought to be raised on this appeal were raised in the Court of first instance or in the Supreme Court of the State of Alabama.

7. For that the jurisdictional statement of Appellant fails to state the way in which the questions sought to be reviewed were passed upon by the Supreme Court of the State of Alabama with such pertinent quotations of specific portions of the record or summary thereof with specific references where it is made to appear as will support the assertion that the rulings of the Court were of such nature to bring the case within the statutory provisions by which the jurisdiction of the Supreme Court of the United States is invoked.

8. For that the jurisdictional statement of the Appellant shows the appeal herein to involve no substantial Federal question.

9. For that it affirmatively appears from the jurisdictional statement of the Appellant that no substantial Federal question is involved on this appeal.

10. For that it affirmatively appears from the jurisdictional statement of the Appellant that the matters sought to be reviewed have been previously adjudicated by the Supreme Court of the United States adversely to the contentions now made by this Appellant by decisions so firmly established as to preclude any further review by the Supreme Court of the United States.

11. For that the right to pursue the profession of the practice of law is a privilege rather than a property right, and such privilege is subject to the power of the Court admitting an Attorney to practice to disbar or suspend him.

12. For that the Supreme Court of the United States in the case of *Ex parte Wall,* 107 Supreme Court Reporter, page 265, decided October Term, 1882, held that due process of law does not require a plenary suit and a trial by jury in all cases where property or personal rights are involved.

13. For that the Supreme Court of the United States in the case of *Ex parte Wall,* 107 Supreme Court Reporter, page 265, decided October Term, 1882, held that an attorney had not been denied due process of law in disbarment proceedings before a Judge without a jury.

14. For that the constitutional principle sought to be invoked on this appeal has been precluded by former decisions of the Supreme Court of the United States from further review.

RICHARD T. RIVES,
(Signed) JAMES W. AIRD,
As Attorney for the Board of Commissioners of the State Bar of Alabama.

No. 278. GRACE *v.* BOARD OF COMMISSIONERS OF THE STATE BAR OF ALABAMA. Appeal from the Supreme Court of Alabama. October 18, 1943. *Per Curiam:* The appeal is dismissed for the want of a substantial federal question. *Ex parte Burr*, 9 Wheat. 528, 530; *Ex parte Secombe*, 19 How. 9, 13; *Ex parte Robinson*, 19 Wall. 505, 512; *Selling* v. *Radford*, 243 U. S. 46, 49. *Menza B. Grace, pro se.* *Mr. Richard T. Rives* for appellee. Reported below: 244 Ala. 267, 13 So. 2d 178.